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HIGH COURT OF DELHI AT NEW DELHI

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Mat Appeal No.56/2012

Decided on : 4th March, 2015

KRISHAN LAL

..... Appellant

Through: Mr. O.N. Sharma, Advocate.

Versus

MANJU

..... Respondent

Through: Mr. Mohd. Ali, proxy counsel.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

C.M. No.13762/2012

1. This is an appeal filed by the appellant against the judgment dated 24.02.2005 by virtue of which the petition of the respondent for divorce on the ground of mental cruelty and desertion was allowed ex parte. Along with the appeal, CM No.13762/2012 has been filed under Order 41 Rule 3A read with Section 5 of the Limitation Act, 1963 seeking condonation of delay of 2594 days.

2. I have heard the learned counsel for the appellant and gone through the record.

3. Briefly stated the admitted facts of the case are that the present appellant is purported to have got married to the respondent according to Hindu rights and ceremonies on 11.04.1992 at Delhi. It is also not disputed that both the appellant as well as the respondent were having this as a second marriage. The appellant alleged that on 28.04.1993, he was thrown out from the house of the respondent which resulted in his filing a petition under Section 9 of the Hindu Marriage Act, 1955 bearing No.292/1993. The respondent in order to counter the said petition, filed a petition for divorce on 12.08.2000 under Section 13 of the Hindu Marriage Act, 1955 which was given No.536/2000. The petition under Section 9 of the Hindu Marriage Act, 1955 is stated to have been dismissed as withdrawn by the appellant on 11.10.2001. Further the respondent's petition for divorce under Section 13 of the HMA Act (536/2000) was also dismissed by the learned ADJ on merits after trial on 01.06.2002.

4. On 11.03.2003, the appellant filed a second petition under Section 9 of the Hindu Marriage Act, 1955 which was dismissed in default. The respondent chose to file a second petition for divorce on the ground of

cruelty and desertion which was given number 402/2003 under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955.

5. It is alleged that the appellant filed a suit bearing No.166/2003 before the Civil Judge, Delhi and also filed a criminal complaint for various offences committed by the respondent at Gohana, Haryana. On 24.02.2005, an ex parte decree of divorce against the present appellant was passed by the learned ADJ in HMA No.402/2003 without the appellant being served. It has been alleged by him that he also filed a third petition under Section 9 of the Hindu Marriage Act, 1955 being HMA No.474/2007 which also came to be dismissed on 21.08.2008 on the ground that a decree of divorce has already been passed against the appellant and, therefore, the said petition is not maintainable. It is alleged by the appellant that on 09.07.2008, the appellant learnt about for the first time that a decree of divorce on the ground of cruelty and desertion has been passed against him by the learned ADJ. As a consequence of which, he filed an application under Order 9 Rule 13 CPC for setting aside the ex parte decree of divorce granted against him which was also dismissed by the learned ADJ on 22.10.2009 on the ground that the appellant was not able to show sufficient cause for setting aside the ex parte decree of

divorce. The appellant filed an appeal against the said order being FAO No.376/2009 which was also dismissed vide order dated 30.03.2012. As a consequence of which, the appellant filed the present appeal against the ex parte divorce deed dated 24.02.2005 in HMA No.402/2003 along with an application for condonation of delay of 2594 days in filing the instant appeal.

6. So far as the condonation of delay in filing the appeal against the ex parte decree is concerned, that is without any merit on account of the fact that not only the application seeking condonation of delay has been rejected by the learned ADJ, but also by the learned single Judge of the High Court in FAO No.376/2009 where the court has observed that there is no illegality or infirmity in the order of the trial court which may call for interference. The reason for this finding returned by the learned single Judge is that it has taken note of the fact that not only there were three addresses furnished by the respondent in the divorce petition and the appellant had been served by registered post at one of the addresses, but also, he was served at the address which was furnished by him at Gohana, Haryana. It was also taken note of by the learned Judge of the High Court that the address at Gohana, Harayana, which was furnished as

one of the addresses by the respondent, is the same address which has been disclosed by the appellant in the criminal complaint filed by him at Gohana, Haryana.

7. In addition to this, the court has taken note of the fact that the appellant was also served through substituted service by way of publication in Dainik Tribune, Hindi Edition which has a wide circulation in Tehsil Gohana, Haryana.

8. All these facts made the court to draw an irresistible conclusion that the appellant was duly served and he is not able to show any sufficient cause for his non appearance which prevented him from contesting the divorce petition. Accordingly, the present application seeking condonation of delay of 2594 days in filing the instant appeal also deserves to be dismissed as the finding with respect to the appellant having not been able to show sufficient cause has attained finality and the same cannot be reopened in the present proceedings.

9. If that be so, then the delay of 2594 days stands as not condoned and consequently, the resultant effect would be that the appeal of the appellant against the ex parte decree of divorce granted by the court becomes non entertainable.

10. Even if this aspect of the matter is kept aside and the merit of the ex parte decree of divorce is seen, then a reading of the sequence of events as well as the controverted testimony of the respondent clearly shows that the learned trial court has rightly passed a decree of divorce in favour of the respondent on the ground of mental cruelty and desertion. This is reflected from the uncontroverted testimony of the respondent herself who has appeared in the witness box and her testimony has been corroborated by the testimony of two other witnesses which she has chosen to produce clearly states that both the parties had this as a second marriage. The respondent was employed and she had from her own funds, been able to create an immovable asset by purchasing an LIG flat, the appellant was pestering the respondent right from the first day of marriage to transfer the said LIG flat in his name and wanted the respondent to credit her entire salary to his account so as to squeeze money from her. He had not only cajoled, persuaded, but threatened her to the extent of blackmailing her that in case she does not do this, then cases would be registered against her and her family members which threat, as a matter of fact, the appellant executed by filing a criminal

complaint against the respondent and her brother at Gohana, Haryana which was also dismissed.

11. All these aspects have been held to be constituting mental cruelty on the part of the appellant on the basis of which the court has passed an ex parte decree of divorce against the present appellant. So far as the second ground is concerned, it has been stated by the said ex parte judgment that the respondent was deserted by the appellant in the year 1993 till 2005 when the divorce was granted and the appellant never took any steps to resume cohabitation with the respondent and only repeatedly filed petitions under Section 9 of the Hindu Marriage Act, 1955 to give a semblance as if he was very keen to give matrimonial company to the respondent. These petitions have either been withdrawn or dismissed by the court which fortifies that at the time when the decree of divorce on the ground of desertion was passed, the respondent had been living in desertion for more than a decade after having been abandoned by the appellant.

12. A perusal of the analysis of evidence done by the learned trial court clearly shows that there was ample evidence before the trial court to warrant passing of the decree on the ground of mental cruelty as well as

desertion as has been done by it and, therefore, I find no infirmity in the ex parte decree of divorce passed by the court which may warrant interference by this court.

13. For the reasons mentioned above, I find that the present appeal filed by the appellant is without any merit. The appellant has not been able to show any sufficient cause for his non appearance despite the fact that he was served. Even if this aspect is ignored, he has not been able to show even on merits as to how the decree of divorce suffers from any illegality, infirmity or irregularity.

14. The present appeal is accordingly dismissed.

V.K. SHALI, J.

MARCH 04, 2015
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